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Committee on Economic, Social and Cultural Rights

Fifty-second session

Summary record (partial)* of the 2nd meeting
Held at the Palais Wilson, Geneva, on Monday, 28 April 2014, at 3 p.m.

Chairperson: Mr. Kedzia

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 3.05 p.m.

Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights: submissions by national human rights institutions and non-governmental organizations

Ukraine

1. **Mr. Kryklyvenko** (Office of the Ukrainian Parliament Commissioner for Human Rights) said that over 38,000 human rights violations had been reported to the Office of the Ukrainian Parliament Commissioner in 2013. Almost a third concerned rights covered by the International Covenant on Economic, Social and Cultural Rights. The Parliament of Ukraine had adopted new anti-discrimination legislation in 2012 but the new provisions established neither effective remedies for victims nor adequate penalties for perpetrators, besides diverging from the Committee's general comment No. 20. The Office hoped that a draft law to address some of the deficiencies would shortly be approved by Parliament.

2. Accurate statistics for bias-motivated crimes were not available. With particular regard to discrimination against the Roma population, the lack of up-to-date demographic information severely hampered any efforts to quantify the problem and provide appropriate assistance. The Office of the Ukrainian Parliament Commissioner welcomed the approval of the strategic action plan for the protection and integration of the Roma minority but doubted its ability to generate tangible positive change.

3. The Office was also concerned about the lack of de facto gender equality, persistent gender stereotyping and systemic violations of labour rights that included a failure to guarantee adequate and timely remuneration. Furthermore, trade union leaders were reportedly hampered in their efforts to protect the social, economic and labour rights of members and the legislative and regulatory provisions adopted to protect the constitutional rights of persons with disabilities were largely ineffectual in practice. Social protection, particularly financial assistance, was also deficient and poverty remained a major problem; significant swathes of the population had insufficient food, clothes and housing. Social benefit payments and the living wage established by law were inadequate and the indicators used for their calculation required urgent review.

4. Analysis conducted by the Office of the Ukrainian Parliament Commissioner had also revealed serious deficiencies in health care, evidenced by persistently high morbidity and mortality rates. The health-care reforms undertaken had been fragmented at best, particularly the attempts to improve treatment options for tuberculosis, HIV/AIDS, viral hepatitis and other chronic conditions. It was hoped that the new Government would give due attention to all those problems.

5. **Mr. Kerdoun** asked whether the figures for reported human rights violations provided by Mr. Kryklyvenko reflected all segments of the population of Ukraine and whether disaggregated data showing the national or ethnic origin of victims were available. Were the victims exclusively or predominately Roma, or were there other minorities in Ukraine whose rights were routinely violated?

6. **Mr. Ribeiro Leão** asked what the State party was doing to align its anti-discrimination law with European standards and whether the national plan for the integration of the Roma and other minorities had already been implemented.

7. **Mr. Sadi** asked to what extent corruption impeded the enjoyment of economic, social and cultural rights in Ukraine and whether the Office of the Parliament Commissioner expected the new Government to be able to address and resolve the State party's human rights shortcomings.

8. **Mr. Kryklyvenko** (Office of the Ukrainian Parliament Commissioner for Human Rights) said that the figures for reported human rights violations reflected all complaints

received from citizens of Ukraine without distinction. He did not have disaggregated statistics to hand but would endeavour to provide them subsequently. The national strategic plan for the integration of the Roma had been adopted one year previously. Although a good plan on paper, lack of funding limited the scope for progress. Likewise, at present anti-discrimination measures existed on paper but not in practice. It was hoped that the draft law currently before Parliament would be adopted on second reading, paving the way for concrete action against discrimination.

9. The annual report of the Office of the Parliament Commissioner had been submitted to the new Government two weeks previously. Over 100 of its 600 pages detailed violations of economic, social and cultural rights. Since the problems had taken root over a period extending over two decades, realistically, a similar period of time would be required to address and resolve them, but the Office would do everything in its power to expedite reforms.

10. Corruption had been omitted from his statement, in part due to time constraints and in part because it did not fall under the Office's remit. However, corruption was undoubtedly at the heart of all the country's problems, not just its shortcomings in implementing the Covenant, and the Office would press the Government to adopt anti-corruption measures of equal force to its anti-discrimination strategies.

Indonesia

11. **Ms. Moniaga** (Komnas HAM – National Human Rights Commission of Indonesia) said she wished to draw the Committee's attention to substantive changes in State laws, regulations and policies that had affected the rights of indigenous populations, including *masyarakat adat*, to inhabit their customary land and exploit the natural resources therein. The forestry law enacted in 1999 did not respect human rights principles and the guidelines for resolving issues of collective land rights were being applied in a fragmented manner. As a result, the agrarian conflicts rooted in colonial land policy had proliferated under the New Order administration of President Suharto and successive Governments.

12. The New Order administration had classified almost 70 per cent of national territory as "State Forest Areas", failing to recognize the pre-existing rights of local peoples, including *masyarakat adat*, to use those lands and the natural resources they contained. Many *masyarakat adat* had subsequently found themselves "illegally" occupying land they had lived on and worked for generations. Their collective land rights had not been restored in spite of recent democratization processes, although there had been some positive developments, including a Constitutional Court decision to review the 1999 forestry law and the agreement of a joint action plan for the management of Indonesian forest areas and resolution of land-related disputes, led by the Corruption Eradication Commission and the Presidential Working Unit for Supervision and Management of Development.

13. While recent Government efforts to promote non-discriminatory policies, especially the drive to enhance the rights of person with disabilities, were to be welcomed, there was a need for further efforts and support in that area. There were also major challenges in the areas of health care and social security, including a need for broader, easier access to health-care facilities and professionals, more comprehensive social security coverage and better coordination. The deficiencies were particularly pronounced in the field of mental health where, because of the limited facilities, physical restraint was sometimes used. Efforts to improve access to medical care for persons with mental health problems were visible in a few provinces but should be replicated throughout the country.

14. **Ms. Heroepoetri** (Komnas Perempuan – National Commission on Violence against Women of Indonesia) said that, based on the interpretation of article 1 of the International Covenant adopted by Komnas Perempuan, any measure that deprived women of sovereignty over their bodies, including regulations that restricted their mobility or freedom of expression, was considered a violation of their human rights. Komnas Perempuan had

expanded the definition of women to include all persons who self-identified as women sociologically and psychologically, in addition to all biological women, in order to guarantee respect for the rights of transgender persons.

15. Komnas Perempuan had six specific concerns. Firstly, multilayered violence and the tendency to deny its existence were depriving women of access to a livelihood, forcing them to work in unsafe environments such as plantations, factories, domestic service and the sex trade. Secondly, Komnas Perempuan had identified no less than 342 discriminatory State policies predicated on religious or moral considerations, which sought to control, restrict or criminalize women's freedom of movement, expression and dress. Thirdly, although Indonesia had ratified the Convention on the Rights of Persons with Disabilities, disability remained a subject of stigma and a source of inequality and discrimination; for example, the Marriage Act authorized polygamy if the wife had a disability or incurable illness. Fourthly, physical, sexual and mental violence inflicted in a family environment on persons whose sexual orientation or gender identity were considered contrary to cultural or religious "norms" was a persistent problem that often went unreported, depriving victims of their economic, educational and family rights. Fifthly, in Papua the spread of extractive industries was depriving women of their livelihoods by forcing them to leave their traditional lands, besides causing ecological degradation and social problems such as prostitution and trafficking in human beings. Lastly, the State party's report to the Committee (E/C.12/IDN/1) tended to focus on normative efforts to ensure respect for economic, social and cultural rights and failed to address the challenges and obstacles which impeded practical implementation of the Covenant. It also failed to address the abuse suffered by migrant workers, particularly migrant domestic workers.

16. Komnas Perempuan wished to draw attention to inconsistencies in the Government data presented to support the claim that violence against women, particularly sexual abuse of women workers, had decreased, noting that fluctuations in the numbers could reflect access to complaint mechanisms rather than a genuine decline. It also wished to mention that, contrary to what was stated in paragraph 139 of the report, Komnas Perempuan did not deal with complaints on an individual basis. All complaints were reviewed by a referrals unit which passed them on to relevant service providers. As a national human rights institution, Komnas Perempuan had a predominantly supervisory mandate that involved issuing recommendations to State and community institutions. Despite its strategic role, it had no significant support from the State in terms of funding, facilities or human resources.

17. **Mr. Kerdoun** asked what percentage of the Indonesian population was classified as indigenous and what specific characteristics distinguished indigenous persons from other Indonesians.

18. **Mr. Sadi** asked which specific human rights principles were not respected in the forestry law of 1999 and in what specific ways the law neglected the rights of indigenous peoples. Further information about the environmental degradation caused by forestry and what was being done to protect natural resources would be appreciated, as would clarification regarding the expanded definition of women.

19. **Ms. Moniaga** (Komnas HAM) said that use of the term "indigenous" was controversial in Indonesia because all Indonesians were considered to be indigenous. The preferred term was *masyarakat adat* and, according to civil society, up to 30 per cent of the population could be included in that category. *masyarakat adat* communities had a strong attachment to their ancestral lands and the related natural resources, had unique customs and traditions, and sometimes had their own economic and political systems and institutions.

20. Because, under the 1999 forestry law, *masyarakat adat* traditional lands had been designated as State forests, it had in some cases become theoretically illegal for affected local communities to continue practising their traditional farming and felling trees.

Information about the associated environmental destruction could be provided subsequently if desired.

21. **Ms. Heroepoetri** (Komnas Perempuan) said that the definition of women had been expanded in an attempt to prevent discrimination and the exclusion of persons who were not biologically women and did not conform to traditional social, religious or cultural constructs. The aim was to allow for the possibility of a "third sex", namely, women who lived as men but remained biologically women and men who lived as women but remained biologically men, and to alleviate the social pressure and harassment that such persons frequently experienced.

22. **Mr. Dasgupta** asked Ms. Moniaga to further clarify the definition of indigenous people used by her organization. Given that local regulations in Indonesia were often less progressive than national laws, he wondered whether it was always necessary to protect local customs and traditions. He questioned whether self-selection of gender was an appropriate goal, or whether efforts should focus on legitimizing the rights of gay, lesbian and transgender persons.

23. **Ms. Shin** said she wished to know more about the division of labour between Komnas HAM and Komnas Perempuan. She requested further information about the situation in Indonesia concerning various types of violence against women, such as domestic violence and rape.

24. **Mr. Mancisidor** asked whether linguistic diversity was promoted in Indonesia, and whether speakers of minority languages faced discrimination in attempting to exercise their economic, social and cultural rights.

25. **Ms. Moniaga** (Komnas HAM) said that the term "indigenous people" was controversial in Indonesia, and that Indonesian law referred instead to *masyarakat hukum adat* (communities based on customary law). That term, however, was defined differently in various laws. Komnas HAM therefore supported the parliamentary initiative to adopt a special law on such communities, so as to avoid further confusion. Local customs that were not in line with human rights principles should not be protected. The activities of Komnas HAM and Komnas Perempuan were complementary, and in many cases the two bodies worked together, particularly on policy reform initiatives. Indonesia also had separate human rights institutions dealing with the rights of children and the rights of the elderly. Language was indeed taken into consideration when identifying *masyarakat hukum adat*, but in some cases the languages spoken were very similar to those spoken by nearby communities.

26. **Ms. Heroepoetri** (Komnas Perempuan) said that human rights should apply to all human beings regardless of gender or sexual preference. The rights of transgender persons were often neglected, and her organization aimed to change that. Komnas HAM and Komnas Perempuan often carried out joint investigations on issues such as migrant workers or indigenous peoples. Sixteen types of sexual violence had been identified in Indonesia, most of which were not criminalized under national law. The legal definition of rape, for example, was very narrow and should be expanded to include other forms of rape.

27. **Mr. Abdel-Moneim** asked what forms of rape Ms. Heroepoetri was referring to.

28. **Ms. Heroepoetri** (Komnas Perempuan), said that rape was defined in criminal law as forced penetration of the vagina by a penis, and that in accordance with Islamic law it could not be proven unless it had been witnessed by four people. The definition should be expanded to cover forced penetration of the vagina using any object in order to obtain sexual gratification.

29. **Mr. Hafiz** (Indonesian Civil Society Network on Economic, Social and Cultural Rights Advocacy) recommended that the Committee should raise the following issues in its

concluding observations on Indonesia: the exclusion of various social groups, including people living with HIV/AIDS, refugees and asylum seekers and religious minorities; the quality and accessibility of social protection services, particularly health-care services; the adoption of laws and national action plans to protect domestic workers and migrant workers; the adoption of the bill on gender justice and equality; the application of the Covenant by the courts; the harmonization of national and local laws and regulations to bring them into line with human rights principles; adoption of the bill on the rights of indigenous peoples; the environmental and human rights impact of development projects, especially natural resource extraction projects; regulations and monitoring systems on the situation of workers; the right to receive an education without discrimination, particularly for poor and disadvantaged persons and those living in remote areas; the right to an adequate standard of living, including food security, access to clean water and adequate sanitation; respect for trade union rights; and the drafting of a law on the management of intangible heritage and the preservation of historic buildings.

30. **Mr. Hapsara** (International NGO Forum on Indonesian Development) said that religious minorities in Indonesia continued to suffer multiple discrimination. Displaced Ahmadis, for example, had been languishing in refugee camps for eight years and had been denied identity documents that would allow them access to social security programmes. Shiites were also living in refugee camps following physical assaults against them and were deprived of access to property, productive land and housing. They had not received any compensation for the damage they had suffered.

31. Weak coordination and ill-preparedness had marred the implementation of the new universal health insurance programme, and underemployed persons and those working in the informal sector were at risk of not being fully protected under the system. The maternal mortality rate had actually increased between 2007 and 2012, and it was highly unlikely that Indonesia would meet the relevant targets set out in the Millennium Development Goals.

32. His organization therefore recommended that the Government of Indonesia should: fulfil the civil rights of religious minorities; guarantee access to basic services; award compensation for damage suffered by Ahmadis and Shiites; guarantee access to education for children from minority groups; guarantee the freedom and safety of religious minorities; address any regulatory overlaps in the implementation of social security schemes; strengthen the functioning of social security agencies; and guarantee access to social protection for all groups, including workers in the informal sector.

33. **Mr. Tjahjono** (Franciscans International), speaking on behalf of his own organization and of several NGOs working in Papua province, proposed that the Committee should recommend that the Government of Indonesia should: adopt the bill on the rights of indigenous peoples; take legislative measures to protect indigenous peoples' rights to their customary lands and fully involve them in development projects; and combat discrimination against indigenous peoples. The principle of free, prior and informed consent should be implemented in a meaningful manner in Papua for development and extractive projects, and affected communities should be involved in the preparation and presentation of environmental and human rights impact assessments for such projects. All licences issued to private enterprises operating in Papua and West Papua provinces should include clauses requiring them to respect human rights.

34. With regard to non-discrimination, the Government should conduct awareness-raising campaigns on the issue, provide support services for women victims of violence or abuse and set up a regional office of Komnas Perempuan in Papua. The Government should also supply disaggregated data on health services, improve access to water and sanitation in Papua and hold highland districts accountable for providing essential health services to citizens.

35. The quality of education should be improved in disadvantaged areas, and school curricula should be adapted to local needs. The Papuan Customary Council should be recognized as a legitimate representative body of Papuans. Lastly, the Committee should call upon the Government to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

36. **Ms. Bras Gomes** enquired about the current status of the bill on the protection of domestic workers and the bill on gender justice and equality. She asked whether there had been any discussion in Indonesia of the International Labour Organization (ILO) Social Protection Floors Recommendation, 2012 (No. 202).

37. **Mr. Sadi** asked what measures were in place to protect Indonesian domestic workers abroad.

38. **Mr. Hafiz** (Indonesian Civil Society Network on Economic, Social and Cultural Rights Advocacy) said that he would answer the Committee members' questions at a lunchtime briefing to be held on 30 April.

39. **Mr. Mancisidor** asked whether the lack of guarantees requiring extractive companies to respect human rights meant that the land rights of indigenous peoples were not recognized.

40. **Mr. Schrijver** enquired about the current state of freedom of religion in Indonesia and asked whether there were any displays of religious intolerance in the country.

41. **Mr. Tjahjono** (Franciscans International) said that there was no adequate legal protection for the land rights of indigenous peoples in Indonesia.

42. **Ms. Darooka** (Global Coalition for Social Protection Floors) said that the right to social security was a foundation of inclusive, equitable and sustainable development. Her organization appreciated the letter addressed by the Chairperson of the Committee to States parties emphasizing that austerity measures must identify a social protection floor and ensure the protection of a minimum core content of rights. She encouraged the Committee to issue a statement recognizing that the ILO Social Protection Floors Recommendation, 2012 (No. 202) was instrumental to the realization of the right to social security and calling on States to take appropriate measures to respect, protect and fulfil the right to social security for all individuals, including by ensuring the participation of vulnerable and marginalized groups in the design and implementation of laws and policies on social protection. She asked the Committee to urge the adoption of universal social security entitlements and increased protection as an integral part of an overarching goal of social protection in the post-2015 development agenda.

43. **The Chairperson** thanked the representatives for their high-quality presentations and assured them that their various proposals and suggestions would be taken into account.

The discussion covered in the summary record ended at 4.50 p.m.